

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

HEVER GUZMAN-GUERRERO,

Defendant.

NO: 2:15-CR-96-RMP

PROTECTIVE ORDER AND ORDER
GRANTING IN PART UNITED
STATES' MOTION FOR
DISCLOSURE OF SEARCH
WARRANT AND MOTION FOR
PROTECTIVE ORDER

BEFORE THE COURT is the United States' Motion for Disclosure to Defense Counsel But Not Unsealing, ECF No. 26, and Motion for Protective Order, ECF No. 27. The Court has reviewed the motions, all relevant filings, and is fully informed.

The United States moves to disclose the sealed search warrant in this case to defense counsel. ECF No. 26. The United States indicates that defense counsel has no objections to the motion to disclose. *Id.* The United States further submits that the parties be permitted to make open and/or closed court references to the existence and/or contents of such sealed documents. *Id.* However, the United

1 States does request that any future pleadings that reference the content of such
2 sealed documents be filed under seal. *Id.* In tandem with the motion to disclose,
3 the United States moves for a protective order governing defense counsel's
4 possession of that sealed search warrant. ECF No. 27.

5 The Court finds good cause to grant the motions with the exception of the
6 United States' request that all future pleadings that reference the contents of the
7 sealed documents be filed under seal. If the parties desire future pleadings to be
8 filed under seal, the parties may make that motion at the time those pleadings are
9 filed. It would be counterproductive to allow reference to the contents of the sealed
10 documents in open court and yet simultaneously argue that all future pleadings
11 referencing the same information must be filed under seal. As the Court must
12 "start with a strong presumption in favor of access to court records," *Foltz v. State*
13 *Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003), the Court will
14 determine whether good cause exists to seal any future pleadings when those
15 pleadings are filed. Accordingly, **IT IS HEREBY ORDERED:**

16 1. United States' Motion for Disclosure to Defense Counsel But Not

17 Unsealing, **ECF No. 26**, is **GRANTED in Part and DENIED in Part.**

18 The United States may disclose the search warrant to defense counsel,

19 but not for further public dissemination, and subject to the Protective

20 Order below. The parties may make open and/or closed-court references

21 to the existence of the sealed documents.

1 2. The Search Warrant under 2:15-mj-230-JTR shall **REMAIN SEALED**
2 pursuant to the Magistrate Judge's Order, 2:15-mj-230-JTR ECF No. 5.

3 3. United States' Motion for Protective Order, **ECF No. 27**, is **GRANTED**.

4 **IT IS FURTHER ORDERED:**

5 4. The United States will provide discovery materials on an on-going basis
6 to defense counsel;

7 5. Defense counsel may possess but not copy (excluding the production of
8 necessary working copies) the discovery materials, including sealed
9 documents. A copy means a copy of the actual discovery, summarizing
10 content of discovery, quoting from content of discovery, and providing it
11 to the Defendant;

12 6. Defense counsel may show to, and discuss with, his/her client the
13 discovery material, including sealed documents, but defense counsel shall
14 not disclose the identity of confidential sources or information that would
15 readily lead to the identification of confidential sources until further
16 Court order;

17 7. Defense counsel shall not provide original or copies of discovery
18 materials directly to his/her client and counsel shall explain the terms and
19 parameters of this Protective Order to the client. "Copies" include copies
20 of actual discovery, written summaries of discovery, and quotations taken
21 from discovery;

- 1 8. Defense counsel shall not otherwise provide original or copies of the
2 discovery material to any other person, including subsequently appointed
3 or retained defense counsel, but excluding any staff of defense counsel or
4 investigator and/or expert engaged by defense counsel, who will also be
5 bound by the terms and conditions of the Protective Order;
- 6 9. The United States and defense counsel may reference the existence and
7 content of sealed discovery material in open and closed court proceedings
8 relevant to 2:15-CR-96-RMP;
- 9 10. Discovery, not including attorney work product, shall be returned to the
10 United States in its totality upon completion of the case. The Court
11 deems the case completed upon final judgment or mandate resulting from
12 direct appeal. The potential for future habeas proceedings does not justify
13 retention of the discovery after the completion of the case. In the event of
14 such proceedings, however, discovery may be made available by Court
15 order;
- 16 11. The parties reserve the right to seek relief from the Protective Order
17 should the need arise. Defense counsel may challenge this Order's
18 prohibition on disclosing confidential informants to Defendant based on
19 good cause shown that Defendant's rights to prepare a defense or to
20 effective representation by counsel are effectively impeded by this Order;
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1 12. Defense counsel shall inform Defendant of the potential penalties for
2 violations of this Protective Order contained in Federal Rule of Criminal
3 Procedure 16(d)(2), and that any violation of this Protective Order may
4 be punished by contempt.

5 **IT IS SO ORDERED.**

6 The District Court Clerk is directed to enter this Order and to provide copies
7 to counsel.

8 **DATED** this 25th day of September 2015.

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10 *s/ Rosanna Malouf Peterson*
11 ROSANNA MALOUF PETERSON
12 Chief United States District Court Judge
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